STATE BAR OF WISCONSIN
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WSSFC 2026

Plenary 1

Who's The Client?

Presenters:
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About the Presenters...

Julijana Englander is an attorney at Neider & Boucher, S.C. law firm in Madison. Ms. Englander earned her B.A. from Duke University and her J.D. from the University of Wisconsin Law School. At Neider & Boucher, S.C., Ms. Englander is a member of the Business Group; her practice areas include business law, transactional law, M&A, real estate, health law, employment law and corporate governance. She works with clients throughout the life cycle of their business – from entity selection and formation, governance and operations, to succession and termination. Prior to entering law school, Ms. Englander worked in consulting at a regulatory affairs firm in New York and in tech at an AdTech start-up. Ms. Englander is a member of the American Bar Association and the State Bar of Wisconsin.

Stacie H. Rosenzweig is a shareholder at Halling & Cayo, S.C. in Milwaukee. Her practice emphasizes representation of regulated professionals, including lawyers and health care professionals who face possible disciplinary action by licensing authorities, as well as ethics and compliance counseling.

Monte E. Weiss is the founder of Weiss Law Office, S.C. Monte routinely represents insurance carriers and policyholders with respect to insurance contract interpretation issues, claims of bad faith, and other complex insurance coverage matters. Monte has drafted several personal lines property and casualty insurance policies, including homeowner and automobile policies. In the past, Monte served on District Investigation Committee Two of the Office of Lawyer Regulation, and his practice currently involves the defense of legal malpractice claims. Monte also serves as a mediator and accepts court appointments to act as a referee/special master in insurance coverage disputes.

Who Is the Client, Really? — Detailed Outline

Identifying the Client When Roles and Relationships Aren't Clear State Bar of Wisconsin Ethics Guidance & CLE Panel Analysis (Who Is the Client, Really? at 1)

Panel: Attorney Julijana Englander (Neider & Boucher, S.C.); Attorney Stacie H. Rosenzweig (Halling & Cayo, S.C.); Attorney Monte Weiss (Weiss Injury Law, S.C.) (Who Is the Client, Really? at 2)

I. The Starting Point — Who the Client Is

- **A. The "obvious" answer.** It sounds simple: the client is the person — natural or entity — whose name is on your fee agreement for a specific matter.
- **B. Today's thesis — not so fast.** The name on the engagement letter is a starting point, not the answer. In Wisconsin, client identity turns on intent, conduct, and reasonable expectations — sometimes over your objection.
- **C. Why it matters.** Getting client identity wrong drives the malpractice and discipline docket. Identifying the client correctly is the gateway to every other ethical duty.
  - Implicated rules: SCR 20:1.1 (competence); SCR 20:1.3 (diligence); SCR 20:1.4 (communication); SCR 20:1.6 (confidentiality); SCR 20:1.7 (conflicts); SCR 20:1.9 (duties to former clients); SCR 20:1.13 (organization as client).

II. The Core Test: How the Attorney-Client Relationship Forms

- **A. Formation rules.**
  - *Question of fact.* Whether an attorney-client relationship exists depends on the intent of the parties and is a question of fact. *In re Disciplinary Proc. Against Kostich*, 2010 WI 136.
  - *Contract rules apply.* The relationship is one of agency resting on contract — standard offer, acceptance, and consideration rules apply. *Gustafson v. Physicians Ins. Co. of Wis.*
  - *Formality not required.* The relationship may be implied from words and actions without a signed retainer or paid fee. *Sec. Bank v. Klicker*.
  - *Ethics & Contracts.* While a valid contractual relationship can exist without a written agreement, legal ethics rules operate independently. Under SCR 20:1.5, most fee arrangements must be communicated in writing, with specific agreements requiring the client's signature. Compliance with ethical rule SCR 20:1.5 is distinct from the general principles of contract law.

- **B. Reasonable expectations (objective standard).**
  - *Primary determinant.* Determined principally by the reasonable expectations of the person seeking the lawyer's advice. *Kostich*.
  - *Advice sought and given.* Forms when advice is sought from a known attorney and the attorney actually gives advice. *Williamson v. Schweiger*.
  - *Objective limit.* A subjective belief that is objectively unreasonable does not create a relationship.
  - *Burden of proof.* The party asserting the relationship bears the burden of proving it. *Marten Transp. Ltd. v. Hartford Specialty Co.*

C. Warm-Up Poll — "Contact Us"

- **Hypo.** Firm website invites visitors to describe their legal problem and promises follow-up. Dana, a prospective divorce client, submits marital assets, an affair, and hidden accounts. The next day Dana's spouse — an existing client — asks you to handle the divorce. Can you proceed against Dana?
- **Answer: C — probably not.** The website solicited the very submission Dana made, so the contact was not unilateral and Dana may be a prospective client owed confidentiality.
- **Analysis.**
  - Unilateral contact (caller, emailer, web-form-filler) does not by itself create a relationship, even if the person thinks they hired a lawyer, because that belief is not objectively reasonable. *Williamson v. Schweiger*.
  - *However*, when a person responds to the lawyer's own advertising/solicitation, the communication is no longer unilateral; a site inviting submissions can create a "discussion" under Rule 1.18, triggering prospective-client duties. Wis. Formal Ethics Op. EF-11-03 (July 29, 2011).
  - **Takeaway:** Silence plus ambiguity is where accidental relationships are born.
- **Practice tip — disclaimers.** Put a disclaimer on every intake channel stating clearly (1) that no lawyer-client relationship is created and (2) that the communication is not confidential. A blanket statement that no relationship is created "until both parties agree" is not enough.

III. Module A — Organizational Clients: The Entity Is the Client

- **A. The entity rule (SCR 20:1.13).** A lawyer retained by an organization represents the organization acting through its duly authorized constituents.

- *Separate legal identity.* Where a lawyer represents a corporation, the client is the corporation — not its officers, directors, employees, or shareholders. *Jesse by Reinecke v. Danforth*.
- *Constituents aren't automatic clients.*
- *Core purpose.* Lets counsel pursue the entity's best interests without the conflicting burden of representing constituents individually.

- **B. The duty to clarify.**
  - *Mandatory clarification.* A lawyer shall explain the client's identity when it is apparent the organization's interests are adverse to a constituent's. SCR 20:1.13(f); reinforced by SCR 20:1.4.
  - *Dual-representation limits.* Dual representation of a constituent is allowed only subject to SCR 20:1.7.
  - *Independent consent.* Entity consent for dual representation must come from someone other than the individual being represented.
- **C. Beyond corporations.**
  - *Partnerships.* Treated as a separate entity if the parties dealt with it as one; whether counsel represents an individual partner is a fact question based on intent and conduct. *Sec. Bank v. Klicker*.
  - *Pre-formation work.* The entity rule applies retroactively — work for an organizer related to incorporation becomes representation of the entity once incorporated, not the individual. *Jesse by Reinecke*.
- **D. When the company and owner are sued together.**
  - Identify two distinct clients: the entity and the owner as a separate legal person.
  - Default rule — corporate counsel represents the entity, not constituents (SCR 20:1.13).
  - A constituent is a client only if you explicitly agree to individual representation; dual representation requires satisfying SCR 20:1.7 with unconflicted corporate consent.
- **E. Where the conflict hides.**
  - *Scope-of-authority split.* Was the owner acting within scope (indemnification) or on a frolic (entity points finger at owner)?

- *Material limitation.* Significant risk that defending one materially limits representation of the other is a concurrent conflict (SCR 20:1.7).
- *Separation.* The moment adversity is apparent, SCR 20:1.13(f) requires explaining entity identity to the owner.
- *Nonconsentable conflicts.* If clients blame each other, representation becomes nonconsentable.

F. Hypo A — "The Owner's Frolic"

- **Hypo.** You incorporated startup Acme, Inc. and represent the company; sole owner Riley gave most instructions for a year. Acme and Riley are now sued together for fraud; discovery suggests Riley pocketed funds personally. Acme's board (minus Riley) weighs a cross-claim against Riley, who assumed you were his lawyer too.
- **Answer: C.** You represent Acme; you may represent Riley individually only with proper SCR 20:1.7 consent given for Acme by someone other than Riley — and the cross-claim makes that nonconsentable
  - Entity rule governs; dual representation needs consent from an unconflicted officer/board member.
  - Direct-adversity bar: Acme's potential claim against Riley collides with the bar on one client's claim against another.
  - Clarification mandatory — tell Riley in writing you represent Acme, not him. *Jesse by Reinecke*; *Plath v. Olson*.

IV. Module B — Guardians ad Litem: A Lawyer With No "Client"?

- **A. The statutory role.** A Wisconsin GAL "shall be an advocate for the best interests" and functions independently.
  - Custody/placement — Wis. Stat. § 767.407(4): advocates best interests of the minor child.
  - Adult guardianship — Wis. Stat. § 54.40(3): represents best interests of the proposed ward.
  - CHIPS/TPR — Wis. Stat. § 48.235(3)(a): reports inconsistency with the child's wishes.
- **B. The GAL represents a concept, not a person.**

  - The GAL does not represent a child per se; the statutory duty is to represent the concept of best interest. *Wiederholt v. Fischer*.
  - *Wiederholt* expressly rejected a GAL's characterization of children as his "clients."
  - For conflict analysis, however, a GAL is treated as one who "represents a child." *In Int. of Steveon R.A.*; *Berndt v. Molepske*.
- **C. GAL vs. adversary counsel.**
  - *Guardian ad litem:* advocates best interests (§ 54.40(3)); not bound by the ward's/child's wishes; investigates independently
  - *Adversary counsel:* advocates the client's expressed wishes; duty-bound to the client's directions; owes traditional attorney-client duties. *In re Guardianship of Muriel K.*; *In re Guardianship of Jennifer M.*
- **D. The no-contact trap with GALs.**
  - If a GAL represents the children, the no-contact rule (SCR 20:4.2) applies to them.
  - A lawyer who interviewed children in a custody dispute without GAL consent violated SCR 20:4.2. *Matter of Disciplinary Proc. Against Kinast*.
  - A ward's right to counsel includes counsel's presence during a GAL interview to protect privilege.

E. Hypo B — "The Eager Advocate"

- **Hypo.** Appointed GAL for a 10-year-old in a custody fight; the child emphatically wants to live with her father, but your investigation favors the mother. Opposing counsel insists you represent the child and must advance what she wants.
- **Answer: B.** Advocate for the mother (best interests) and separately convey the child's stated wishes to the court
  - The GAL advocates best interests, is not bound by the child's wishes, but must communicate those wishes to the court; opposing counsel has it backwards. Wis. Stat. § 767.407; *Wiederholt*; *Berndt*. (Who Is the Client, Really? at 27)

V. Module C — Represented Parties and the No-Contact Rule (SCR 20:4.2)

- **A. The rule.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter. SCR 20:4.2(a).
  - *Unrepresented persons (SCR 20:4.3).* Must disclose your role, correct misunderstandings, and give no legal advice beyond "get a lawyer."
- **B. Who counts as "represented."**
  - *Non-parties covered.* The rule reaches ANY person represented in the matter, whether a named party or not. *State ex rel. Robinson v. Town of Bristol*.
  - *Organizational constituents covered* where the person: (1) has managerial responsibility; (2) whose act/omission is imputed to the organization for liability; or (3) whose statement may constitute an organizational admission.
- **C. The limited-scope gotcha (SCR 20:4.2(b)).** A party receiving limited-scope representation under SCR 20:1.2(c) is treated as unrepresented for no-contact purposes unless the limited-scope lawyer notifies opposing counsel otherwise.

D. Hypo C — "The Helpful Phone Call"

- **Hypo.** You represent plaintiffs suing a town; the town and its insurer each have counsel for this matter. Worried a road patrolman witness needs a lawyer, you call the insurer directly to ask whether it will provide him representation, insisting you never discussed the merits.
- **Answer: C — Yes, a violation.** Contacting the town's represented insurer (a non-party) about a litigation-related subject violated SCR 20:4.2, which covers represented non-parties, not just named parties. *State ex rel. Robinson v. Town of Bristol*.

VI. Module D — Estate Planning & Marital Agreements: Two Spouses, One Lawyer

- **A. Joint-representation analysis.**
  - *Concurrent conflict rule.* Representing both spouses means two current clients — run SCR 20:1.7.
  - *Material limitation.* Exists if there is a significant risk the representation is materially limited by duties to the co-client.
  - *Written informed consent.* Requires a reasonable belief in competent joint representation plus signed written informed consent from both spouses.
- **B. The "no secrets" problem.**

- A material-limitation conflict arises where a lawyer has relevant information about one client that cannot be communicated to the co-client.
- *Up-front waiver mandatory* — address in writing that in joint representation there are generally no secrets between co-clients.
- A spouse's hidden beneficiary or asset blows up the joint engagement.

- **C. Wills & trusts for both spouses.**
  - Most common joint representation — usually consentable because goals align.
  - *Divergence drivers:* prior marriages & blended families; children from different relationships; unequal asset ownership; separate private instructions.
  - *Best practice:* joint engagement letter with an explicit no-secrets provision.
- **D. Marital agreements — prenups & postnups.**
  - *Statutory rule (Wis. Stat. § 766.58).* Parties intending to marry, or who are married, may contract regarding marital property.
  - Sharing one counsel (or one party being unrepresented) does not by itself make the agreement unconscionable.
  - Enforceability turns on voluntariness and fair/reasonable financial disclosure.
- **E. Statute permits, ethics cautions.**
  - *Inherent adversity.* Marital agreements divide rights against each other; advancing one spouse's position limits advocacy for the other.
  - *Full-disclosure requirement.* Because validity depends on full financial disclosure, the no-secrets dynamic is mandatory.
  - If competent joint service is impossible under SCR 20:1.7, the conflict is nonconsentable.

F. Hypo D — "The Second Marriage"

- **Hypo.** Pat and Jordan, both with adult children from prior marriages, ask you to draft a postnuptial agreement and matching estate plans. Midway, Pat quietly asks you not to tell Jordan that she wants her business to go only to her kids.
- **Answer: C — Stop and address the conflict.** A co-client asking you to keep a material secret from the other is a conflict you must address, and you likely cannot continue jointly without disclosure.

- Holding material secrets from a co-client is a material-limitation conflict SCR 20:1.7; Wis. Stat. § 766.58

VII. Module E — The Automobile Accident: Multiple Victims, Minors & Policy Limits

- **A. Both spouses injured as passengers.**
  - *Aligned interests initially.* Joint representation works well when asserting claims against a third-party driver.
  - *Limited-fund competition.* If policy limits are insufficient, co-clients compete for the same pool — triggering an SCR 20:1.7 conflict.
  - *Loss-of-consortium claims.* Derivative claims must be joined (Wis. Stat. § 803.03) and draw from the same limited recovery pool.
- **B. When one spouse was driving — bright-line rule (SCR 20:1.7(b)(3)).** A lawyer may NOT jointly represent clients where the representation involves asserting a claim by one client against another in the same litigation. If the driver spouse contributed to the collision, joint representation is nonconsentable — no waiver fixes it.
- **C. Minors & capacity (SCR 20:1.14).**
  - *Client identity.* The minor is the client (not the parent).
  - *Normal-relationship duty.* Maintain a normal attorney-client relationship as far as reasonably possible.
  - *Protective action.* Seeking GAL appointment is permitted only when the lawyer reasonably believes the minor faces substantial harm and cannot act in their own interest.
- **D. Settling minor claims — GAL & court.**
  - *Court approval mandatory.* Any compromise/settlement of a minor's claim requires court approval (Wis. Stat. § 807.10).
  - *GAL requirement.* A GAL is mandatory for unrepresented minor settlements (Wis. Stat. § 803.01).
  - *Adversity trigger.* A GAL is mandatory if the parent's financial interest competes with the minor's recovery.

E. Hypo E — "The Family Car"

- **Hypo.** Mom was driving the family SUV when another driver ran a light; Mom, Dad, and their 8-year-old are all hurt and ask you to represent all three against the other driver. At

intake you learn Mom may have been speeding and the other driver's policy limits are modest.

- **Answer: C — No.** Potential claims against Mom plus limited limits create conflicts; the child also needs a GAL and court approval.
  - Mom's potential liability makes a claim by the child/Dad against Mom nonconsentable under SCR 20:1.7; limited policy creates competing claims; the child's settlement requires court approval and a GAL under § 807.10

VIII. Module F — Third-Party Payors: When Someone Else Pays the Bill

- **A. The rule (SCR 20:1.8(f) & 5.4(c)).** Compensation from a non-client is allowed only if three conditions are met:
  1. The client gives informed consent.
  2. No interference with the lawyer's independent judgment (SCR 20:5.4(c)).
  3. Client confidentiality is protected (SCR 20:1.6).
  - **The payor is NOT the client. The person represented IS.**
- **B. Tripartite relationship — insurer panel-counsel dynamics.**
  - *Dual-client recognition.* Insurer retention creates dual clients (insurer & insured); the relationship is sui generis. *Juneau Cnty. Star-Times*, 2013 WI 4.
  - *Right to control defense.* The insurer controls defense/settlement within limits. *Marten Transp.*
  - *No interference with judgment.* The insurer has no right to dictate counsel's independent professional judgment. *Majorowicz v. Allied Mut. Ins. Co.*
- **C. Private third-party payors.**
  - *Examples:* parent paying for an adult child; employer paying for an employee.
  - *Sample agreement checklist:* explicit statement that the represented person is the client; payor gets zero control over legal strategy; confidentiality preserved (no updates without client consent); signed informed consent from the client.

D. Hypo F — "Dad Writes the Check"

- **Hypo.** A father hires and pays you to defend his 25-year-old son on a serious charge. Two weeks in, Dad demands the file, insists you not raise a defense that embarrasses the family, and wants you to plead it out.

- **Answer: C — The son is your client.** Dad gets nothing that overrides the son: no control over judgment and no confidential information without consent.
    - A payor may fund representation but cannot interfere with judgment or receive confidential files without client consent. SCR 20:1.8 & 5.4.

E. Panel discussion — Module F questions

1. *Insurer litigation guidelines.* Where is the line between permissible cost control and improper interference with judgment? (SCR 20:5.4; *Majorowicz*.)
2. *Consent letters.* What specific language belongs in your standard third-party payor consent letter? (SCR 20:1.8.)
3. *Engagement definition.* Do you treat the insurer as a co-client or payor — and does your letter explicitly say which?

IX. Best Practices / Risk Management

- **A. At the outset.**
    - *Precise engagement letters.* Name the exact client entity; include an express disclaimer of constituent individual representation. *Plath v. Olson*.
    - *Joint-representation agreements.* Paper written informed consent with explicit no-secrets provisions. SCR 20:1.7.
    - *Declination letters.* Send non-engagement letters to clarify expectations and block implied relationships. *Kostich*; *Williamson*.
    - *Divergence of interests.* Warn constituents immediately when interests diverge. SCR 20:1.13(f).
- **B. Throughout the matter.**
    - *Re-run conflict checks* as roles shift or cross-claims emerge.
    - *Screen nonconsentable conflicts* — direct adversity in the same proceeding cannot be waived.
    - *Paper third-party consent* — document SCR 20:1.8(f) consent and guard independent judgment.
    - *Minor protections* — plan early for SCR 20:1.14, GAL, and court approval (§ 807.10).

- *Verify representation* — check representation status before contacting anyone. SCR 20:4.2

X. Key Takeaways

1. **IDing the client** — client identity turns on intent, conduct, and reasonable expectations.
2. **Entity rule** — the organization is the client, not its constituents.
3. **GALs** — represent the best-interest concept, but are treated as child's counsel for conflicts/no-contact.
4. **No-contact** — reaches represented non-parties under SCR 20:4.2.
5. **Joint representation** — requires written informed consent; no secrets allowed.
6. **Payor rule** — paying fees creates no right of control over independent legal judgment.

XI. Reference Appendix — Authorities Referenced

- **Supreme Court Rules (SCR Chapter 20):** 1.0, 1.1, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.13, 1.14, 1.18, 4.2, 4.3, 5.4. (Who Is the Client, Really? at 63)
- **Wisconsin Statutes:** §§ 48.235, 54.40, 766.58, 767.407, 803.01, 803.03, 807.10. (Who Is the Client, Really? at 63)
- **Key cases cited throughout:** *In re Disciplinary Proc. Against Kostich*; *Gustafson v. Physicians Ins. Co. of Wis.*; *Sec. Bank v. Klicker*; *Williamson v. Schweiger*; *Marten Transp. Ltd. v. Hartford Specialty Co.*; *Jesse by Reinecke v. Danforth*; *Plath v. Olson*; *Wiederholt v. Fischer*; *In Int. of Steveon R.A.*; *Berndt v. Molepske*; *In re Guardianship of Muriel K.*; *In re Guardianship of Jennifer M.*; *Matter of Disciplinary Proc. Against Kinast*; *State ex rel. Robinson v. Town of Bristol*; *Juneau Cnty. Star-Times*; *Majorowicz v. Allied Mut. Ins. Co.*

CLE ETHICS PANEL PRESENTATION

Who Is the Client, Really?

Identifying the Client When Roles and Relationships Aren't Clear

State Bar of Wisconsin Ethics Guidance & CLE Panel Analysis

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Today's Speakers

The Panel

Attorney Julijana Englander
Neider & Boucher, S.C.

Attorney Stacie H. Rosenzweig
Halling & Cayo S.C.

Attorney Monte Weiss
Weiss Injury Law, S.C.

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THE STARTING POINT

The “Obvious” Answer

"It sounds simple: The client is the person — natural or entity — whose name is on your fee agreement for a specific matter."

Today’s Thesis: Not so fast.

The name on the engagement letter is a starting point, not the answer. In Wisconsin, client identity turns on **intent, conduct, and reasonable expectations** — sometimes over your objection.

PROFESSIONAL RESPONSIBILITY

Why This Matters

Getting client identity wrong drives the malpractice and discipline docket across key rules:

SCR 20:1.1 — Competence in handling the matter
SCR 20:1.3 — Diligence in handling the matter
SCR 20:1.4 — Obligation to communicate

SCR 20:1.6 — Mandatory confidentiality
SCR 20:1.7 — Conflict of interest limits
SCR 20:1.9 — Duties to former clients
SCR 20:1.13 — Organization as client

Identifying the client correctly is the gateway to every other ethical duty.

AGENDA

Presentation Roadmap

Core Test
Formation & reasonable expectations

Module A
Organizational clients & owner suits

Module B
Guardians ad Litem

Module C
Represented parties & no-contact

Module D
Estate planning & marital agreements

Module E & F
Auto accidents & 3rd-party payors

Interactive Structure for Each Module: Hypo → Poll → Panel Discussion

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LEGAL FRAMEWORK

The Core Test: Formation Rules

- **Question of Fact:** Whether an attorney-client relationship exists depends on the intent of the parties and is a question of fact.
  In re Disciplinary Proc. Against Kostich, 2010 WI 136, 330 Wis. 2d 378, 793 N.W.2d 494
- **Contract Rules Apply:** The relationship is one of agency resting on contract — standard offer, acceptance, and consideration rules apply.
  Gustafson v. Physicians Ins. Co. of Wisconsin, 223 Wis. 2d 164, 588 N.W.2d 363 (Ct. App. 1998)
- **Formality Not Required:** The relationship may be implied from words and actions without a signed retainer or paid fee.
  Sec. Bank v. Klicker, 142 Wis. 2d 289, 418 N.W.2d 27 (Ct. App. 1987)

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OBJECTIVE STANDARD

The Core Test: Reasonable Expectations

- **Primary Determinant:** Determined principally by the reasonable expectations of the person seeking the lawyer's advice.
  In re Disciplinary Proc. Against Kostich, 2010 WI 136, 330 Wis. 2d 378, 793 N.W.2d 494
- **Advice Sought & Given:** Forms when advice is sought from a known attorney and the attorney actually gives advice.
  Williamson v. Schweiger, 2014 WI App 90, 356 Wis. 2d 327, 855 N.W.2d 492
- **Objective Limit:** A subjective belief that is objectively unreasonable does not create a relationship.
- **Burden of Proof:** The party asserting the attorney-client relationship bears the burden of proving it.
  Marten Transp. Ltd. v. Hartford Specialty Co., 194 Wis. 2d 1, 533 N.W.2d 452 (1995)

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WARM-UP POLL

POLL: Contact Us Prompt

Your firm's website lists your e-mail address under a banner that invites visitors to tell the firm about their legal problem and promises that the firm will be in touch. Dana, a prospective divorce client, uses the form to send you a long message laying out marital assets, an affair, and hidden accounts. You've never met Dana. The next day, Dana's spouse — an existing client of yours — asks you to handle the divorce. **Can you proceed against Dana?**

A. Yes - Dana was a stranger who emailed unilaterally, so no duty arose

B. Yes - you never agreed to represent Dana

C. Probably Not - your website solicited the very submission Dana made, so the contact was not unilateral and Dana may be a prospective client owed confidentiality

D. No — opening the e-mail alone created a lawyer-client relationship

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POLL ANSWER & ANALYSIS

POLL ANSWER: Warm-Up

C **Correct Answer: C — Likely no — your website solicited the very submission Dana made, so the contact was not unilateral and Dana may be a prospective client owed confidentiality**

Legal Analysis:

- Unilateral contact from a caller (or an emailer or web-form-filler) does not in itself create a client relationship (either a prospective or actual one)—even if the client thinks that they've hired a lawyer, it's not objectively reasonable to believe that. *Williamson v. Schweiger, 2014 WI App 90, 356 Wis. 2d 327, 855 N.W.2d 492*
- **HOWEVER,** when a person responds to the lawyer's own advertising/solicitation, the communication is no longer unilateral and a site inviting submissions can create a "discussion" under Rule 1.18, triggering prospective-client duties. *Wis. Formal Ethics Op. EF-11-03 (July 29, 2011)*

Takeaway: Silence plus ambiguity is where accidental relationships are born.

POLL ANSWER & ANALYSIS

PRACTICE TIP

Don't Forget a Disclaimer!

Put a disclaimer on every intake channel. An effective disclaimer must state *two* things clearly: that no lawyer-client relationship is created, *and* that the communication is not confidential. A blanket statement that no relationship is created until both parties agree is not enough.

Sample Disclaimer:

Contact disclaimer: If you send an email through our Contact Us feature, your email will not create an attorney-client relationship and will not necessarily be treated as privileged or confidential. You should NOT send sensitive or confidential information via this e-mail service. This law firm may choose not to accept you as a client.

Takeaway: Silence plus ambiguity is where accidental relationships are born.

MODULE A

Organizational Clients

The Entity Is the Client — Even When the Owner Is Sued Too

11

ENTITY REPRESENTATION

The Entity Rule: SCR 20:1.13

> **"A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." — SCR 20:1.13(a)**

- **Separate Legal Identity:** Where a lawyer represents a corporation, the client is the corporation, not its officers, directors, employees, or shareholders.
  Jesse by Reinecke v. Danforth, 169 Wis. 2d 229, 485 N.W.2d 63 (1992)
- **Constituents Aren't Automatic Clients:** Corporate constituents are not automatically individual clients of counsel.
- **Core Purpose:** Allows counsel to pursue the entity's best interests without the conflicting burden of representing constituents individually.

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WARNINGS

The Duty to Clarify

- **Mandatory Clarification:** When dealing with constituents, a lawyer *shall explain the identity of the client* when it is apparent that the organization's interests are adverse to those of the constituents.
  SCR 20:1.13(f); Reinforced by communication duty under SCR 20:1.4
- **Dual Representation Limits:** Dual representation of a constituent is allowed only subject to SCR 20:1.7 conflict rules.
- **Independent Consent Required:** Entity consent for dual representation must come from someone other than the individual being represented.
  SCR 20:1.13; SCR 20:1.7

ENTITY FORMATIONS

Beyond Corporations: Partnerships & Pre-Formation

Partnerships

A partnership is treated as a separate entity if the parties dealt with it as one. Whether counsel represents an individual partner is a fact question based on intent and conduct.
Sec. Bank v. Klicker, 142 Wis. 2d 289, 418 N.W.2d 27

Pre-Formation Work

The entity rule applies retroactively. Work done for an organizer related to incorporation becomes representation of the entity once incorporated, not the individual.
Jesse by Reinecke v. Danforth, 169 Wis. 2d 229

JOINT LITIGATION

When the Company & Owner Are Sued

Scenario: Company and sole owner sued together over owner's conduct. The natural reflex is to defend both.

- **Identify Two Distinct Clients:** The entity is one client; the owner is a separate legal person.
- **Default Rule:** Corporate counsel represents the entity, not constituents. (SCR 20:1.13)
- **Agreement Required:** Constituent is a client only if you explicitly agree to individual representation.

Dual representation requires satisfying SCR 20:1.7 with unconflicted corporate consent.

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HIDDEN RISK

Where the Conflict Hides

- **Scope of Authority Split:** Was the owner acting within scope (indemnification) or on a frolic (entity points finger at owner)?
- **Material Limitation:** Significant risk that defending one materially limits representation of the other constitutes a concurrent conflict. (SCR 20:1.7)
- **Separation:** The moment adversity is apparent, SCR 20:1.13(f) requires explaining entity identity to the owner.
- **Nonconsentable Conflicts:** If clients blame each other, representation becomes nonconsentable.

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MODULE A HYPOTHETICAL

HYPO A: The Owner's Frolic

You incorporated a startup, Acme, Inc., and represent the company. Its sole owner, Riley, gave you most instructions for a year. Now Acme and Riley are sued together for fraud.
Discovery suggests Riley may have pocketed funds personally. Acme's board (minus Riley) wonders whether Acme should cross-claim against Riley. Riley assumed you were his lawyer too.

MODULE A POLL

POLL: Where Do You Stand?

- **A** You represent both — keep defending them together.
- **B** You represent Riley — Riley brought you in and instructed you.
- **C** You represent Acme; you may represent Riley individually only with proper SCR 20:1.7 consent (given for Acme by someone other than Riley), and the cross-claim makes that nonconsentable.
- **D** You represent whoever the board says.

POLL ANSWER & ANALYSIS

POLL ANSWER: Module A

C **Correct Answer: C — Acme is the client; Riley is separate.**

- **Entity Rule Governs:** Client is the entity. Dual representation requires SCR 20:1.7 consent given by an unconflicted officer/board member.
- **Direct Adversity Bar:** Because Acme may assert a claim against Riley, joint representation risks running into the bar on one client's claim against another.
- **Clarification Mandatory:** Must clarify to Riley in writing that you represent Acme, not him.

Jesse by Reinecke, 169 Wis. 2d 229; Plath v. Olson, 2014 WI App 90

MODULE B

Guardians ad Litem

The GAL Puzzle — A Lawyer With No "Client"?

STATUTORY MANDATES

GAL Role: What the Statutes Say

A Wisconsin GAL "shall be an advocate for the best interests" and functions independently:

Custody / Placement
Wis. Stat. § 767.407(4)
Advocates best interests of minor child.

Adult Guardianship
Wis. Stat. § 54.40(3)
Represents best interests of proposed ward.

CHIPS / TPR
Wis. Stat. § 48.235(3)(a)
Reports inconsistency with child's wishes.

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CONCEPTUAL FRAMEWORK

The GAL Represents a Concept

- **Best Interest Concept:** The GAL does not represent a child per se; statutory duty is to represent the *concept of best interest*.
  Wiederholt v. Fischer, 169 Wis. 2d 524, 485 N.W.2d 442 (Ct. App. 1992)
- **Rejection of Client Label:** Wiederholt expressly rejected a GAL's characterization of children as his "clients."
- **Conflict Analysis Qualification:** For conflict analysis, a GAL is treated as one who "represents a child."
  In Int. of Steveon R.A., 196 Wis. 2d 171; Berndt v. Molepske, 211 Wis. 2d 572

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ROLE DISTINCTION

GAL vs. Adversary Counsel

Guardian ad Litem

- Advocate for best interests (§ 54.40(3))
- Not bound by ward's/child's wishes
- Investigates independently

Adversary Counsel

- Advocate for expressed wishes
- Duty bound to client's directions
- Traditional attorney-client duties

In re Guardianship of Muriel K., 2002 WI 27; In re Guardianship of Jennifer M., 2010 WI App 8

ETHICS TRAP

The No-Contact Trap With GALs

- **Children Are Represented Parties:** If a GAL represents the children, the no-contact rule (SCR 20:4.2) applies to them.
- **Disciplinary Violation:** A lawyer who interviewed children in a custody dispute without GAL consent violated SCR 20:4.2.
  Matter of Disciplinary Proc. Against Kinast, 192 Wis. 2d 36, 530 N.W.2d 387 (1995)
- **Privilege Protection:** A ward's right to counsel includes counsel's presence during a GAL interview to protect privilege.

MODULE B HYPOTHETICAL

HYPO B: The Eager Advocate

You're appointed GAL for a 10-year-old in a custody fight. The child tells you emphatically she wants to live with her father. Your investigation convinces you the child's best interests favor her mother.
Opposing counsel corners you, asserting that you represent the child and that you have to advance what she wants.

MODULE B POLL

POLL: What Do You Do?

- **A** Advocate for the father — you must follow your client's wishes.
- **B** Advocate for the mother (best interests), and separately convey the child's stated wishes to the court.
- **C** Withdraw — you have a conflict.
- **D** Ask the child to pick again.

POLL ANSWER & ANALYSIS

POLL ANSWER: Module B

B **Correct Answer: B — Advocate best interests; convey child's wishes.**

Reasoning: GAL advocates best interests and is not bound by child's wishes, but must communicate those wishes to court. Opposing counsel has it backwards.

Wis. Stat. § 767.407; Wiederholt, 169 Wis. 2d 524; Berndt, 211 Wis. 2d 572

MODULE C

Represented Parties

"Do I Know You're Represented?" — SCR 20:4.2

ETHICS MANDATE

The No-Contact Rule: SCR 20:4.2

> **"In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter…" — SCR 20:4.2(a)**

Unrepresented Persons (SCR 20:4.3): Must disclose role, correct misunderstandings, and give NO legal advice beyond "get a lawyer."

SCOPE

Who Counts as "Represented"?

- **Non-Parties Covered:** Rule reaches ANY person represented in the matter, whether a named party or not.
  State ex rel. Robinson v. Town of Bristol, 2003 WI App 97
- **Organizational Constituents Covered:**
  1. Managerial responsibility
  2. Act/omission imputed to organization for liability
  3. Statement may constitute organizational admission

EXCEPTION TRAP

The Limited-Scope Gotcha

SCR 20:4.2(b) Rule:

A party receiving limited-scope representation under SCR 20:1.2(c) is treated as **unrepresented** for no-contact purposes unless the limited-scope lawyer notifies opposing counsel otherwise

Translation: "Represented" is not always what it looks like

MODULE C HYPOTHETICAL

HYPO C: The Helpful Phone Call

You represent plaintiffs suing a town. You know the town and its insurer each have counsel for this matter. Worried a road patrolman witness needs a lawyer, you call the insurer directly to ask whether it will provide him representation.

You insist you never discussed the merits of the underlying lawsuit.

MODULE C POLL

POLL: SCR 20:4.2 Violation?

- **A** No — the insurer isn't a party to the lawsuit.
- **B** No — you didn't discuss the merits.
- **C** Yes — you contacted a represented person about a matter-related subject.
- **D** Only if the patrolman is a managerial employee.

POLL ANSWER & ANALYSIS

POLL ANSWER: Module C

C **Correct Answer: C — Yes, SCR 20:4.2 Violation**

Analysis: Contacting town's represented insurer (non-party) about litigation subject violated SCR 20:4.2. Rule covers represented non-parties, not just named parties.

State ex rel. Robinson v. Town of Bristol, 2003 WI App 97

MODULE D

Estate Planning & Marital Agreements

Two Spouses, One Lawyer — Wills, Trusts, Prenups & Postnups

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CONCURRENT CONFLICTS

Joint Representation Analysis

- **Concurrent Conflict Rule:** Representing both spouses means two current clients — run SCR 20:1.7 analysis.
- **Material Limitation:** Exists if significant risk representation is materially limited by duties to co-client.
- **Written Informed Consent:** Requires reasonable belief in competent joint representation plus signed written informed consent from both spouses.

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CONFIDENTIALITY

The “No Secrets” Problem

A material-limitation conflict arises where a lawyer has relevant information about one client that cannot be communicated to a co-client.

- **Up-Front Waiver Mandatory:** Address in writing that in joint representation there are generally no secrets between co-clients.
- **Impact of Undisclosed Asset:** A spouse's hidden beneficiary or asset blows up the joint engagement.

ESTATE PLANNING

Wills & Trusts for Both Spouses

Most common joint representation — usually consentable because goals align.

Watch for Divergence Drivers:

- Prior marriages & blended families
- Children from different relationships
- Unequal asset ownership
- Separate private instructions

Best Practice: Joint engagement letter with explicit no-secrets provision.

MARITAL AGREEMENTS

Prenups & Postnups: Dual Counsel?

- **Statutory Rule (Wis. Stat. § 766.58):** Parties intending to marry or married may contract regarding marital property.
- **Enforceability Provision:** Fact that both parties share one counsel (or one is unrepresented) does NOT by itself make agreement unconscionable.
- **Enforceability Baseline:** Turns on voluntariness and fair/reasonable financial disclosure.

ETHICS FRICTION

Statute Permits, Ethics Cautions

Inherent Adversity
Marital agreements divide rights against each other. Advancing one spouse's position limits advocacy for the other.

Full Disclosure Requirement
Because validity depends on full financial disclosure, no-secrets dynamic is mandatory.

If competent joint service is impossible under SCR 20:1.7, conflict is nonconsentable.

MODULE D HYPOTHETICAL

HYPO D: The Second Marriage

Pat and Jordan, both with adult children from prior marriages, ask you to draft a postnuptial agreement and matching estate plans.

Midway, Pat quietly tells you that she does not want you to tell Jordan, but that she wants her business to go only to her kids and wants you to keep that out of what you tell Jordan.

MODULE D POLL

POLL: What Now?

A. Honor Pat's request — Pat told you in confidence.

B. Keep drafting for both and stay silent on the business.

C. Stop — a co-client asking you to keep a material secret from the other is a conflict you must address, and you likely cannot continue jointly without disclosure.

D. Withdraw from both and refer out immediately, no discussion.

POLL ANSWER & ANALYSIS

POLL ANSWER: Module D

C **Correct Answer: C — Stop and address the conflict.**

Analysis: In joint representation, holding material secrets from a co-client is a material-limitation conflict.

SCR 20:1.7; Wis. Stat. § 766.58

MODULE E

The Automobile Accident

Multiple Victims, Minors & Policy Limits

MULTIPLE VICTIMS

Both Spouses Injured as Passengers

- **Aligned Interests Initially:** Joint representation works well when asserting claims against a third-party driver.
- **Limited Fund Competition:** If policy limits are insufficient, co-clients compete for the same pool — triggering SCR 20:1.7 conflict.
- **Loss-of-Consortium Claims:** Derivative claims must be joined (Wis. Stat. § 803.03) and draw from same limited recovery pool.

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NONCONSENTABLE CONFLICT

When One Spouse Was Driving

Bright Line Rule: SCR 20:1.7(b)(3)

A lawyer may NOT jointly represent clients where representation involves asserting a claim by one client against another client in the same litigation.

If driver spouse contributed to collision, joint representation is nonconsentable. No waiver fixes it.

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MINORS & CAPACITY

Children (Minors): SCR 20:1.14 Rules

- **Client Identity:** The minor is the client (not the parent).
- **Normal Relationship Duty:** Maintain normal attorney-client relationship as far as reasonably possible.
- **Protective Action:** Seeking GAL appointment permitted only when lawyer reasonably believes minor faces substantial harm and cannot act in own interest.

(Note – the minor's lawyer often acts as their GAL)

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SETTLEMENTS

Settling Minor Claims: GAL & Court

- **Court Approval Mandatory:** Any compromise/settlement of minor claim requires court approval (Wis. Stat. § 807.10).
- **GAL Requirement:** GAL mandatory for unrepresented minor settlements (Wis. Stat. § 803.01).
- **Adversity Trigger:** GAL mandatory if parent's financial interest competes with minor's recovery.

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MODULE E HYPOTHETICAL

HYPO E: The Family Car

Mom was driving the family SUV when another driver ran a light. Mom, Dad, and their 8-year-old are all hurt. The whole family asks you to represent all three against the other driver.
During intake you learn Mom may have been speeding, and the other driver's policy limits are modest.

MODULE E POLL

POLL: Represent All Three?

- **A** Yes — one family, one lawyer, one defendant.
- **B** Yes, with a written waiver from Mom and Dad.
- **C** No — potential claims against Mom plus limited limits create conflicts; child also needs GAL and court approval.
- **D** Only if Mom drops out of the case.

POLL ANSWER & ANALYSIS

POLL ANSWER: Module E

C **Correct Answer: C — No, conflicts and GAL needed.**

Analysis: Potential liability of Mom makes claim by child/Dad against Mom nonconsentable under SCR 20:1.7. Limited policy creates competing claims. Child settlement requires court approval & GAL under § 807.10.

MODULE F

Third-Party Payors

When Someone Else Pays the Bill — Who's the Client?

PAYOR RULES

The Rule: SCR 20:1.8(f) & 5.4(c)

Compensation from non-client allowed ONLY if 3 conditions met:

1. Client gives informed consent.
2. No interference with lawyer's independent judgment (SCR 20:5.4(c)).
3. Client confidentiality protected (SCR 20:1.6).

The payor is NOT the client. The person represented IS.

TRIPARTITE RELATIONSHIP

Insurer Panel Counsel Dynamics

- **Dual Client Recognition:** Insurer retention creates dual clients (insurer & insured); relationship is sui generis.
  Juneau Cnty. Star-Times, 2013 WI 4
- **Right to Control Defense:** Insurer controls defense/settlement within limits. (Marten Transp., 194 Wis. 2d 1)
- **No Interference with Judgment:** Insurer has NO right to dictate independent professional judgment of counsel.
  Majorowicz v. Allied Mut. Ins. Co., 212 Wis. 2d 513

AGREEMENTS

Private Third-Party Payors

Examples: Parent paying for adult child; employer paying for employee.

Sample Agreement Checklist:
- Explicit statement: Represented person is the client.
- Payor gets zero control over legal strategy.
- Confidentiality preserved (no updates without client consent).
- Signed informed consent from client.

MODULE F HYPOTHETICAL

HYPO F: Dad Writes the Check

A father hires and pays you to defend his 25-year-old son on a serious charge. Two weeks in, Dad calls to say that he is paying the bill and wants the file, does not want you raising a defense that embarrasses the family, and wants you to plead it out.

MODULE F POLL

POLL: What Do You Owe Dad?

- **A** Everything — he's paying, so he directs the defense and gets the file.
- **B** The file, but not strategy control.
- **C** Nothing that overrides the son — the son is the client; Dad gets no control over judgment and no confidential information without consent.
- **D** Withdraw — you can't take money from a non-client.

Slide 60 — Poll F

Who Is the Client, Really?

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POLL ANSWER & ANALYSIS

POLL ANSWER: Module F

C **Correct Answer: C — The son is your client.**

Analysis: Payor may fund representation, but cannot interfere with judgment or receive confidential files without client consent under SCR 20:1.8 & 5.4.

Slide 61 — Answer F

Who Is the Client, Really?

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PANEL DISCUSSION

PANEL: Module F Questions

1. **Insurer Litigation Guidelines:** Where is the line between permissible cost control and improper interference with judgment? (SCR 20:5.4; Majorowicz)

2. **Consent Letters:** What specific language belongs in your standard third-party payor consent letter? (SCR 20:1.8)

3. **Engagement Definition:** Do you treat the insurer as a co-client or payor — and does your letter explicitly say which?

RISK MANAGEMENT

Best Practices: At the Outset

- **Precise Engagement Letters:** Name the exact client entity; include express disclaimer of constituent individual representation. (Plath v. Olson)
- **Joint Representation Agreements:** Paper written informed consent with explicit no-secrets provisions. (SCR 20:1.7)
- **Declination Letters:** Send non-engagement letters to clarify expectations and block implied relationships. (Kostich; Williamson)
- **Divergence of Interests:** Warn constituents immediately when interests diverge. (SCR 20:1.13(f))

ONGOING PROTOCOL

Best Practices: Throughout the Matter

- **Re-run Conflict Checks:** Re-run checks as roles shift or cross-claims emerge.
- **Screen Nonconsentable Conflicts:** Direct adversity in same proceeding cannot be waived.
- **Paper 3rd-Party Consent:** Document SCR 20:1.8(f) consent and guard independent judgment.
- **Minor Protections:** Plan early for SCR 20:1.14, GAL, and court approval (§ 807.10).
- **Verify Representation:** Check representation status before contacting anyone. (SCR 20:4.2)

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CORE SUMMARY

Key Takeaways

1. IDing the Client: Client identity turns on intent, conduct, and reasonable expectations.

2. Entity Rule: The organization is the client, not constituents.

3. GALs: Represent best interests concept, but treated as child counsel for conflicts/no-contact.

4. No-Contact: Reaches represented non-parties under SCR 20:4.2.

5. Joint Representation: Requires written informed consent; no secrets allowed.

6. Payor Rule: Paying fees creates no right of control over independent legal judgment.

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REFERENCE APPENDIX

Authorities Referenced

Supreme Court Rules (SCR Chapter 20)

SCR 20:1.0 • 1.1 • 1.3 • 1.4 • 1.6 • 1.7 • 1.8 • 1.9 • 1.13 • 1.14 • 1.18 • 4.2 • 4.3 • 5.4

Wisconsin Statutes

Wis. Stat. § 48.235 • § 54.40 • § 766.58 • § 767.407 • § 803.01 • § 803.03 • § 807.10